

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Haselbeck, et al.	)	Examiner:	Not Yet
		)		Assigned
Appl. No.:	Not Yet Assigned	)		
		)	Group Art Unit:	Not Yet
Filed:	Herewith	)		Assigned
		)		
For:	IDENTIFICATION OF ESSENTIAL	)		
	GENES IN PROKARYOTES	)		
		)		

---

**CONDITIONAL PETITION UNDER 37 C.F.R. § 1.183**  
**TO SUSPEND 37 C.F.R. § 1.52(b)**

Assistant Commissioner for Patents  
 Washington, D.C. 20231

Dear Sir:

Applicants hereby respectfully petition the Commissioner, in the event Applicants' submission of two copies of a compact disc in accordance with 37 C.F.R. § 1.52(e) is not in full compliance with said rule, to suspend the Rule set forth in 37 C.F.R. § 1.52(b) and accept the provided electronic version of the sequence listing.

**FACTS**

Applicants have herewith submitted the above-captioned application for filing with the United States Patent and Trademark Office ("the PTO" or "the Office"). In a good faith effort at full compliance with 37 C.F.R. § 1.52(e), promulgated by the PTO on September 8, 2000 as part of Changes to Implement the Patent Business Goals, and having the effective date of November 7, 2000, Applicants have submitted a compact disc (CD-ROM) in duplicate, along with the necessary transmittal letters setting forth the necessary information. The CD-ROM contains a sequence listing.

Specifically, Applicants' CD-ROM submission complies with § 1.52(e)(1)(ii), stating that "a sequence listing" may be "submitted to the Office on a compact disc." In addition, each CD-ROM complies with the read-only requirements of § 1.52(e)(2), and the electronic standards of § 1.52(e)(3)(i), as well as with the labeling requirements of § 1.52(e)(6). The discs are transmitted in a proper padded envelope and are accompanied by a transmittal letter in compliance with § 1.52(e)(3)(ii). The CD-ROM is submitted in duplicate and each copy is correctly labeled as "Copy 1" or "Copy 2," as required by § 1.52(e)(4). The specification contains an incorporation-by-reference paragraph, which properly incorporates the information on the CD-ROMs into the body of the specification, in compliance with § 1.52(e)(5).

#### PETITION

If the Commissioner finds that the CD-ROM submission of Applicants is not in compliance with § 1.52(e), or that § 1.52(e) is inapplicable to the present submission, Applicants respectfully petition the Commissioner as to the following:

Applicants petition the Commissioner under 37 C.F.R. § 1.183 to suspend 37 C.F.R. § 1.52(b)(1), as effective November 7, 2000, or alternatively, the previous version of 37 C.F.R. § 1.52(b). § 1.52(b)(1) requires that "the application . . . must (i) Comply with the requirements of paragraph (a) of this section," which sets forth the paper requirement of all submissions to the Office. The previous version of 37 C.F.R. § 1.52(b) sets forth the paper requirement of all submissions to the Office.

Applicants respectfully submit that the submission of an application having over 13,000 pages of sequence information is an extraordinary situation. Such submission in paper form creates a great deal of burden on both the Applicants, for submitting, and the Office, for processing, a voluminous document of such magnitude. Applicants respectfully submit further that justice requires that the Commissioner waive requirements of § 1.52(b)(1), and accept the Applicants' submission of the CD-ROM information, due to the good faith efforts of Applicants to comply with a new and untested rule, 37 C.F.R. § 1.52(e). Furthermore, Applicants

respectfully submit that paper submission of any part of an application is not a statutory mandate, and as such, is subject to waiver by the Commissioner.

**CONCLUSION**

Applicants respectfully maintain that the CD-ROM submission of the sequence listing is in full compliance with all the Rules and that Applicants have made every effort in good faith to comply with all the Rules. In the event that Applicants' submission is inadvertently not in compliance, Applicants respectfully petition the Commissioner to suspend the Rules and accept the Applicants' electronic submission in view of the sheer size of the submitted document.

In the event the Commissioner finds it necessary to consider this petition, please charge Deposit Account No. 11-1410 for any petition fee required by 37 C.F.R. § 1.183 and set forth in 37 C.F.R. § 1.17(h).

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated:

March 21, 2001

By:

Daniel Hart

Daniel Hart

Registration No. 40,637

Attorney of Record

620 Newport Center Drive

Sixteenth Floor

Newport Beach, CA 92660

(619) 235-8550